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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,802	04/12/2004	Gabor Pragai	01662/79802	5189

26646 7590 09/12/2007

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EXAMINER	
TRAN, SUSAN T	

ART UNIT	PAPER NUMBER
1615	

NOTIFICATION DATE	DELIVERY MODE
09/12/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@kenyon.com

Office Action Summary	Application No.	Applicant(s)	
	10/823,802	PRAGAI ET AL.	
	Examiner	Art Unit	
	Susan T. Tran	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-67* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-67* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *08/10/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by Bilotte et al. EP 1 266 654 A.

Bilotte discloses a stabilized amlodipine maleate formulation comprising amlodipine maleate, and pharmaceutically acceptable carrier (abstract; paragraphs 0009-0016). Carrier includes ethylcellulose, starch 1500 ®, mannitol, and Elcema® (paragraph 0020-0021; and examples 14-17, 19). Bilotte further discloses the formulation has less than 0.3% Michael adduct after 6 weeks and after 12 weeks at 40°C/75%RH without the use of magnesium stearate (examples 14-17 and 19).

Claim Rejections - 35 USC § 103

Claims 1-9, 11-15, 18-33, 35-41, 43-51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilotte et al. EP 1 266 654, in view of Jerzewski et al. US 5,006,344.

Bilotte is relied upon for the reason stated above. Bilotte teaches the dosage form comprising suitable carriers including dibasic calcium phosphate, microcrystalline cellulose, lactose, sodium starch glycolate, and optionally the use of lubricant such as

magnesium stearate or talc (paragraph 0023). Bilotte does not expressly teach lubricant such as sodium stearyl fumarate or hydrogenated castor oil.

Jerzewski teaches an oral dosage form comprising filler, disintegrant, binder, and other commonly employed pharmaceutically acceptable agents such as sodium starch glycolate, microcrystalline cellulose, crospovidone, and lubricant including sodium stearyl fumarate and hydrogenated vegetable oil (column 1, lines 27-34). Jerzewski further teaches using sodium stearyl fumarate or hydrogenated vegetable oil over magnesium stearate to improve stability of the dosage form (column 1, lines 21-34; and column 2, lines 3-9). Thus, it would have been obvious to one of ordinary skill in the art to modify the formulation of Bilotte using sodium stearyl fumarate or hydrogenated vegetable oil as a lubricant to obtain a stable amlodipine maleate dosage form in view of the teaching of Jerzewski, because Jerzewski teaches magnesium stearate exhibits moisture sensitive and marginal stability, because Jerzewski teaches it is well known in pharmaceutical art to use lubricant other than magnesium stearate to increase stability, because Bilotte teaches the use of other lubricant such as talc, and because Bilotte teaches the desirability of obtaining a stable dosage form.

Claims 10, 16, 17, 34, 42, 52 and 54-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilotte et al. EP 1 266 654, in view of Jerzewski et al. US 5,006,344 and Lemmens et al. US 6,919,087.

Bilotte is relied upon for the reasons stated above. Bilotte does not teach the claimed pH.

Lemmens teaches an amlodipine maleate pharmaceutical composition is provided with good stability when formulated with a pH of 5.5, when measured as a 20% aqueous slurry. Thus, it would have been obvious to one of ordinary skill in the art to prepare the dosage form of Bilotte to have a pH of 5.5 to obtain the claimed invention. This is because Lemmens teaches dosage form of amlodipine maleate exhibits good stability, and because Bilotte teaches the desirability to obtain an amlodipine maleate dosage form with good stability.

Response to Arguments

Applicant's arguments filed 06/11/07 have been fully considered but they are not persuasive.

Applicant argues that Lemmens teaches away from those present claims that recite that the pH is about 5.1 (claims 10, 17, 34, 42, 52, 55, 57, 59, 61, and 63), about 5.0 to about 5.4 (claim 16), or about 5.0, about 5.1, about 5.2, or about 5.3 (claims 54, 56, 58, 60, and 62). Lemmens states that the pH must be between 5.5 and 7.0.

However, the term "about" recited in the claims permits flexibility of the pH values. For example, *about* 5.0 includes pH of 4.5 for the lower range, and 5.5 for the upper range. The lower limit of the pH value taught by Lemmens falls within the claimed range. Furthermore, Lemmens teaches a pH value that results in a stable amlodipine maleate dosage form having the claimed percent amlodipine aspartate at the same storage condition. As a result, the examiner is unable to determine any unexpected result over the claimed pH values. Further, it is noted that magnesium

stearate taught in Lemmens does not influence the pH. See for example column 16, lines 27-65, pH was measured before adding magnesium stearate and filling into capsules.

Applicant argues that Jerzewski is directed to the antihypertensive agent fosinopril. Fosinopril and amlodipine have very different chemical structures. The difference in chemical structure between these two antihypertensive agents makes the disclosures of Jerzewski irrelevant to the present invention. Therefore, one of ordinary skill in the art would not be motivated to combine Jerzewski with Lemmens since the teachings of Jerzewski would not be viewed as being helpful in connection with the problems addressed by Lemmens.

In response to applicant's arguments, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Jerzewski is relied upon solely for the teaching of the oral dosage form prepared using known pharmaceutically acceptable carriers. Jerzewski, unexpectedly found that lubricant such as magnesium stearate exhibits moisture sensitive and marginal stability. Thus, Jerzewski suggests that to obtain a stable oral dosage form, the use of lubricant other than magnesium stearate is desired. Therefore, a skilled artisan with the teachings of Bllotte in view of Jerzewski,

would be motivated to, by routine experimentation using hydrogenated vegetable oil to test the stability of the dosage form.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 08/10/07 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan T. Tran whose telephone number is (571) 272-0606. The examiner can normally be reached on M-F 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SUSAN TRAN
PRIMARY EXAMINER

Art Unit 1615